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AN ORDINANCE NO. _____

AN ORDINANCE FOR LICENSING AND REGULATION OF ADULT BUSINESSES; TO PROVIDE FOR DEFINITIONS WITHIN THE ORDINANCE; TO PROVIDE THE PURPOSE OF THE ORDINANCE; TO PROVIDE FOR PENALTIES FOR VIOLATION OF THE ORDINANCE; TO PROVIDE THAT THE UNLAWFUL OPERATION OF AN ADULT ENTERTAINMENT ESTABLISHMENT IS DECLARED A NUISANCE; TO PROVIDE FOR ABATEMENT IN CERTAIN INSTANCES; TO PROHIBIT CERTAIN ACTIVITIES; TO REGULATE THE EMPLOYEES OF AN ADULT ENTERTAINMENT ESTABLISHMENT; TO REGULATE EROTIC DANCE ESTABLISHMENTS; TO PROHIBIT THE ADMISSION OF MINORS INTO AN ADULT ENTERTAINMENT ESTABLISHMENT; TO PROHIBIT SALES BY ADULT ENTERTAINMENT ESTABLISHMENTS TO MINORS; TO REGULATE THE CLEANING OF THE PREMISES OF SAID ESTABLISHMENTS; TO REQUIRE SELF INSPECTION OF THE PREMISES; TO PROVIDE FOR THE SEALING OF PREMISES FOR UNSANITARY OR UNSAFE CONDITIONS; TO REQUIRE A PERMIT FOR OPERATIONS; TO PROVIDE THAT NO ADULT BUSINESS MAY BE LOCATED WITHIN CERTAIN DISTANCE REQUIREMENTS; TO PROVIDE FOR A PERMIT APPLICATION; TO PROVIDE FOR THE APPLICATION CONTENTS; TO PROVIDE FOR INVESTIGATION OF THE APPLICATION; TO PROHIBIT CERTAIN PERSONS TO BE LICENSEES; TO PROVIDE FOR THE GRANT OR DENIAL OF A PERMIT; TO PROVIDE FOR AN APPEAL PROCEDURE FOR A DENIAL; TO PROVIDE FOR A HEARING ON APPEAL; TO PROVIDE FOR CERTAIN PROCEDURAL REQUIREMENTS FOR THE HEARING; TO PROVIDE FOR PERMIT RENEWAL IN THAT PERMITS ARE NON-TRANSFERRABLE; TO REGULATE THE CHANGE OF LOCATION OR NAME OF AN ADULT ESTABLISHMENT; TO REPEAL CONFLICTING ORDINANCES TO THE EXTENT OF THE CONFLICT; AND FOR OTHER PURPOSES.

WHEREAS, adult entertainment establishments can engender criminal activities; and

WHEREAS, the City Council has reviewed studies that indicate that adult entertainment establishments can engender criminal activities and have heard testimony by the Blue Ridge

Police Chief that criminal activities can occur due to the operation of adult entertainment establishments;

WHEREAS, adult entertainment establishments are a protective form of expression, and therefore the City of Blue Ridge cannot provide for an absolute prohibition, and may only regulate such activity with said regulations representing a balancing of competing interests, being reduced criminal activity and protection of neighborhoods by way of regulation of adult entertainment establishments as weighed against the protected rights of adult entertainment establishments and patrons;

WHEREAS, the City Council, after review of these competing interests, has determined that the health, safety and welfare of the citizens of the City of Blue Ridge, Georgia require regulation of adult entertainment establishments, and therefore, after considering all of these factors and information,

NOW, THEREFORE, BE IT ORDAINED, and it is hereby ordained by the authority of the City Charter and applicable general state law as follows:

SECTION 1. DEFINITIONS.

The following terms used in this ordinance defining adult entertainment establishments shall have the meanings indicated:

Adult bookstore means an establishment having a substantial or significant portion of its stock in trade in books, magazines or other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas; or an establishment with a segment or section, comprising five percent of its total floor space, devoted to the sale or display of such material or five percent of its net sales consisting of printed materials which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

Adult business means either:

- (1) Any business which is conducted exclusively for the patronage of adults and as to which minors are specifically excluded from patronage there at either by law or by the operators of such business;
- (2) Any business, other than those expressly specified in this ordinance, where employees or patrons expose specified anatomical areas or engage in specified sexual activities; or
- (3) Any other business or establishment which offers its patrons services or entertainment characterized by an emphasis on matter depicting, describing, discussing or relating to specified sexual activities or specified anatomical areas.

Adult dancing establishment means a business that features dancers displaying or exposing specified anatomical areas.

Adult hotel or motel means a hotel or motel wherein material is presented which is distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

Adult mini-motion picture theater means an enclosed building with a capacity for less than 50 persons used for presenting material distinguished or characterized by an emphasis on matter depicting or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

Adult motion picture arcade means any place to which the public is permitted or invited where coin- or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time and where the images so displayed are distinguished or characterized by an emphasis, depicting or describing specified sexual activities or specified anatomical areas.

Adult motion picture theater means an enclosed building with a capacity of 50 or more persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

Adult video store means an establishment having a substantial or significant portion of its stock in trade in videotapes or movies or other reproductions, for sale or rent, which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas; or an establishment with a segment or section, comprising five percent of its total floor space, devoted to the sale or display of such material or which derives more than five percent of its net sales from videos which are characterized or distinguished by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

Encounter center or rap establishment means any business, agency or person who, for any form of consideration or gratuity, provides a place where two or more persons may congregate, assemble or associate for the primary purpose of engaging in, describing or discussing specified sexual activities or exposing specified anatomical areas.

Erotic dance establishment means a nightclub, theater or other establishment which features live performances by topless and/or bottomless dancers, go-go dancers, strippers or similar entertainers, where such performances are distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

Escort bureau; introduction services means any business, agency or person who, for a fee, commission, hire, reward or profit, furnishes or offers to furnish names of persons or who introduces, furnishes or arranges for persons who may accompany other persons to or about

social affairs, entertainment or places of amusement or who may consort with others about any place of public resort or within any private quarters.

Good moral character means a person who has not been convicted of a felony or any crime not a felony, if it involves moral turpitude, in the past five years. The city may also take into account such other factors as are necessary to determine the good moral character of the applicant or employee. Conviction shall include pleas of nolo contendere or bond forfeiture when charged with such crime.

Lingerie modeling studio means an establishment whose primary business activity consists of persons exhibiting or modeling lingerie or similar undergarments and characterized or distinguished by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

Massage parlor means an establishment in which services offered include some form of physical contact between an employee and a patron and in which services offered are characterized or distinguished by an emphasis on specified sexual activities or specified anatomical areas.

Minor means any person who has not attained the age of 18 years.

Specified anatomical areas includes the following:

- (1) Less than completely and opaquely covered human genitals or pubic region, buttock or female breast below a point immediately above the top of the areola; or
- (2) Human male genitalia in a discernibly turgid state, even if completely and opaquely covered.

Specified sexual activities includes any of the following:

- (1) Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral/anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship or the use of excretory functions in the context of sexual relationship and any of the following sexually oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zooerasty;
- (2) Clearly depicted human genitals in a state of sexual stimulation, arousal or tumescence;
- (3) Use of human or animal ejaculation, sodomy, oral copulation, coitus or masturbation;

- (4) Fondling or touching of nude human genitals, pubic region, buttocks or female breast;
- (5) Torture;
- (6) Erotic or lewd touching, fondling or other sexual contact with an animal by a human being;
- (7) Masochism, erotic or sexually oriented beating or the infliction of pain; or
- (8) Human excretion, urination, menstruation, vaginal or anal irrigation.

SECTION 2. PURPOSE.

The purpose of this ordinance is to regulate certain types of businesses, including but not limited to adult entertainment establishments, to the end that the many types of criminal activities frequently engendered by such businesses will be curtailed; however, it is recognized that such regulation cannot de facto approach prohibition. Otherwise a protected form of expression would vanish. As to adult dance establishments, this ordinance represents a balancing of competing interests: reduced criminal activity and protection of the neighborhoods through the regulation of adult entertainment establishments versus the protected rights of adult entertainment establishments and patrons.

SECTION 3. VIOLATION AND PENALTY.

(a) Any person violating this ordinance shall be punishable by fine not to exceed \$1000.00 per violation or by imprisonment for a period not to exceed six months or by both such fine and imprisonment. In addition to such fine or imprisonment, violation of this ordinance shall also be grounds for immediate suspension or revocation of the license issued under this ordinance. However, no suspension shall take effect until written notice of the violation has been provided to the applicant-licensee not less than 48 hours prior to time of the hearing before the council. If the evidence for the council shall demonstrate a violation likely to continue which poses an immediate threat to the health, safety or welfare of any citizen, it shall be grounds for an immediate suspension of the license pending a full administrative hearing on the issue.

(b) Regardless whether there shall have been imposed an immediate suspension of the license issued, for any violation of this ordinance the city staff shall provide written notice of the nature of the violation to the applicant-licensee not less than ten days prior to hearing before the council. At the time set for hearing, the council shall receive all relevant testimony in evidence from the city staff, from interested parties and from the permittee. The city council shall make findings of fact as to whether or not the alleged violation of this ordinance has occurred. The following periods of mandatory minimum suspension shall be imposed and enforced for each violation determined by the council as follows:

- (1) First offense, suspension for four months.
- (2) Second offense, suspension for one year.
- (3) Third offense, permanent revocation for a period not less than five years.

SECTION 4. UNLAWFUL OPERATION DECLARED NUISANCE.

Any adult entertainment establishment operated, conducted or maintained contrary to this ordinance shall be declared to be unlawful and a public nuisance. The city may, in addition to or in lieu of prosecuting a quasicriminal action under this ordinance, commence an action or proceeding for abatement, removal or enjoinder thereof, in the manner provided by law. It shall take such other steps and shall apply to such court as may have jurisdiction to grant such relief as will abate or remove such adult entertainment establishment and restrain and enjoin any person from operating, conducting or maintaining an adult entertainment establishment contrary to this ordinance. In addition, violation of this ordinance shall be per se grounds for suspension or revocation of a license granted under this ordinance.

SECTION 5. ABATEMENT AS SANITARY NUISANCE.

Under this ordinance a licensed premises or any part thereof may be abated as a sanitary nuisance.

SECTION 6. CERTAIN ACTIVITIES PROHIBITED.

No person shall publicly display or expose or suffer the public display or exposure, with less than a full opaque covering, of any portion of a person's genitals, pubic area or buttocks in a lewd and obscene fashion.

**SECTION 7. ADULT ENTERTAINMENT ESTABLISHMENT
EMPLOYEES.**

(a) *Qualifications.* Employees of an adult business establishment shall be not less than 18 years of age. Every employee must be of good moral character as defined in this ordinance. Any employee who is convicted of a crime constituting a felony or a crime not a felony involving moral turpitude while employed as an adult business establishment employee shall not thereafter work on any licensed premises for a period of five years from the date of such conviction, unless a longer time is ordered by a court of competent jurisdiction. The term "convicted" shall include an adjudication of guilt, a plea of guilty or nolo contendere or the forfeiture of a bond when charged with a crime, and the terms "employed on the licensed premises" and "work on any licensed premises" shall include, as well, work done or services performed while in the scope of employment elsewhere than on the licensed premises.

(b) *Approval for employment.* Before any person may work on any licensed premises, he shall file a notice with the licensing officer of his intended employment on forms

supplied by the licensing officer and shall receive approval of such employment from the licensing officer. The prospective employee shall supply such information as the licensing officer requires, including a set of fingerprints, on regular state crime information center forms. Upon approval, the employee may begin working on the licensed premises. If approval is denied, the prospective employee may, within ten days of the denial, apply to the licensing officer for a hearing. The decision of the licensing officer after hearing may be appealed to the council, who may issue such order as is proper in the premise. An investigation fee as set by the council from time to time shall accompany the notice of intended employment.

(c) *Suspension, revocation of license.* Violation of this ordinance, other city ordinances, state laws and regulations or the city's rules and regulations shall subject an employee to suspension or revocation of the license.

(d) *Independent contractors.* For the purpose of this ordinance, independent contractors shall be considered as employees and shall be licensed as employees, regardless of the business relationship with the owner or licensee of any adult entertainment establishment.

SECTION 8. EROTIC DANCE ESTABLISHMENTS.

(a) No person shall advertise or cause to be advertised an erotic dance establishment without a valid adult entertainment establishment license issued pursuant to this ordinance.

(b) No later than March 1 of each year an erotic dance establishment licensee shall file a verified report with the licensing officer showing the licensee's gross receipts and amounts paid to dancers for the preceding calendar year.

(c) An erotic dance establishment licensee shall maintain and retain for a period of two years the names, addresses and ages of all persons employed as dancers and all other employees of the establishment.

(d) No adult entertainment establishment licensee shall employ or contract with a person as a dancer who is under the age of 18 years or with a person who is not licensed pursuant to this ordinance.

(e) No person under the age of 18 years shall be admitted to an adult entertainment establishment.

(f) An erotic dance establishment shall be closed between 12:00 midnight and 8:00 a.m. on Monday through Saturday, on Sunday and on December 25 of each year.

(g) No erotic dance establishment licensee shall serve, sell, distribute or suffer the consumption or possession of any intoxicating liquor or controlled substance upon the premises of the licensee.

(h) An adult entertainment establishment licensee shall conspicuously display all licenses required by this ordinance.

(i) All dancing shall occur on a platform intended for that purpose which is raised at least two feet from the level of the floor.

(j) No dancing shall occur closer than ten feet to any patron.

(k) No dancer shall fondle or caress any patron, and no patron shall fondle or caress any dancer.

(l) No patron shall directly pay or give any gratuity to any dancer.

(m) No dancer shall solicit any pay or gratuity from any patron.

(n) All areas of an establishment licensed under this ordinance shall be fully lighted at all times that patrons are present. Full lighting shall be an illumination equal to 3.5 footcandles per square foot.

SECTION 9. ADMISSION TO MINORS.

Under this ordinance it shall be unlawful for a licensee to admit a minor within a licensed premises.

SECTION 10. SALES TO MINORS.

It shall be unlawful for any person, absent parental supervision or supervision of a duly appointed guardian, to sell, barter or give or to offer to sell, barter or give to any minor any service, material, device or thing sold or offered for sale by an adult bookstore, adult motion picture theater, adult massage parlor or adult dancing establishment or other adult entertainment facility. Nothing in this section is intended to authorize any parent or guardian to do any act or permit a minor possession of any goods or service that is unlawful under any law of the state or of the United States.

SECTION 11. CLEANING OF LICENSED PREMISES.

Under this ordinance, each licensed premises shall be maintained in a clean and sanitary condition and shall be cleaned at least once daily and more frequently when necessary. This activity shall be supervised by the person in charge of the licensed premises. There shall be provided adequate facilities, equipment and supplies on the licensed premises to meet this requirement, and adequate ventilation and illumination shall be provided to permit thorough, complete cleaning of the entire licensed premises. Trash and garbage shall not be permitted to accumulate or to become a nuisance on or in the immediate vicinity of the licensed premises, but it shall be disposed of daily or as often as collections permit.

SECTION 12. SELF-INSPECTION OF LICENSED PREMISES.

The licensee of a premises licensed under this ordinance or his designated representative shall make sanitary inspections of the licensed premises at least once a month and shall record his findings on a form supplied by the licensing officer. Each licensed premises shall post and maintain in a readily accessible place a schedule for maintaining the sanitation of the premises.

SECTION 13. SEALING OF PREMISES FOR UNSANITARY OR UNSAFE CONDITIONS.

A premises licensed under this ordinance or any part thereof may be sealed by order of the licensing officer on his finding of a violation of this ordinance resulting in an unsanitary or unsafe condition. Prior to sealing, the licensing officer shall serve on the licensee, by personal service on him or by posting in a conspicuous place on the licensed premises, a notice of the violation and an order to correct it within 24 hours after service. If the violation is not so corrected, the licensing officer may physically seal that portion of the licensed premises causing the violation and order the discontinuance of the use thereof until the violation has been corrected and the seal removed by the licensing officer. The licensing officer shall affix to the sealed premises a conspicuous sign labeled "unclean" or "unsafe," as the case may be.

SECTION 14. PERMIT REQUIRED.

It shall be unlawful for any person to engage in, conduct or carry on, in or upon any premises within the city, an adult entertainment establishment, as defined in this ordinance, without a permit. No permit so issued shall condone or make legal an activity thereunder if the activity is deemed illegal or unlawful under the laws of the state or of the United States.

SECTION 15. OPERATION OF UNLICENSED PREMISES UNLAWFUL.

It shall be unlawful for any person to operate an adult bookstore, adult motion picture theater, adult mini-motion picture theater, adult hotel or motel, adult motion picture arcade, cabaret, encounter center, escort bureau, massage parlor, modeling studio, adult business or adult dancing establishment unless such business shall have a currently valid license or shall have made proper application for license renewal within the time required thereof under this ordinance, which license shall not be under suspension or permanently or conditionally revoked.

SECTION 16. LOCATION.

(a) No adult business or use restricted under this ordinance shall be located at the following places:

- (1) Within 1,000 feet of any parcel of land which is either zoned or used for residential purposes.

(2) Within 1,000 feet of any parcel of land upon which a church, school, governmental building, library, civic center, public park, hospital, nursing home or playground is located.

(3) Within 600 feet of any parcel of land upon which another establishment regulated or defined under this ordinance is located.

(4) On a tract of land containing less than 100 feet of road frontage.

(b) The 1,000-foot distance requirements provided in subsections (a)(1) and (2) of this section shall not apply to locations which hold lawful permits and occupational tax certificates on March 1, 2007. However, the 1,000-foot distance requirements in subsections (a)(1) and (2) of this section shall be effective from and after March 1, 2007 in accordance with O.C.G.A. § 36-60-8, the public health, safety, and welfare requiring it.

(c) For the purposes of this section, distance shall be by airline measurement from the property line, using the closest property lines of the parcels of land involved. The term "parcel of land" means any quantity of land capable of being described by location and boundary, designated and used or to be used as a unit.

SECTION 17. APPLICATION FOR PERMIT.

(a) Any person desiring to obtain a permit to operate, engage in, conduct or carry on any adult entertainment establishment shall make application to the City Clerk or other designated agent of the City. Prior to submitting such application, a nonrefundable administrative fee of \$150.00 shall be paid to the city clerk to defray, in part, the cost of the investigation and report required by this ordinance. The city clerk shall issue a receipt showing that such application fee has been paid. The receipt or a copy thereof shall be supplied by the City Clerk at the time such application is submitted.

(b) The application for permit does not authorize the engaging in, operation of, conduct of or carrying on of any adult entertainment establishment.

SECTION 18. APPLICATION CONTENTS.

Each application for an adult entertainment establishment permit shall contain the following information:

(1) The full, true name and any other names used by the applicant.

(2) The present address and telephone number of the applicant.

(3) The previous addresses of the applicant, if any, for a period of five years immediately prior to the date of the application and the dates of residence at each.

- (4) Acceptable written proof that the applicant is at least 21 years of age.
- (5) The applicant's height, weight, color of eyes and hair and date and place of birth.
- (6) Two photographs of the applicant at least two inches by two inches taken within the last six months.
- (7) The business, occupation or employment history of the applicant for the five years immediately preceding the date of the application; business or employment records of the applicant, partners in a partnership, directors and officers of a corporation and, if a corporation, all shareholders holding more than five percent of the shares of corporate stock outstanding.
- (8) The business license history of the applicant and whether such applicant, in previous operations in this or any other city, state or territory, under a license or permit, has had such license or permit for an adult entertainment business or similar type of business revoked or suspended, the reason therefore and the business activity or occupation subsequent to such action of suspension or revocation.
- (9) All convictions, including ordinance violations, exclusive of traffic violations, stating the dates and places of any such convictions.
- (10) If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter, together with the place and date of incorporation and the name and address of each of its current officers and directors and each stockholder holding more than five percent of the stock in the corporation. If the applicant is a partnership, the applicant shall set forth the name, residence address and dates of birth of the partners, including limited partners. If the applicant is a limited partnership, it shall furnish a copy of its certificate of limited partnership filed with the county clerk. If one or more of the partners is a corporation, the provisions of this subsection pertaining to corporations shall apply. The applicant corporation or partnership shall designate one of its officers or general partners to act as its responsible managing officer. Such designated person shall complete and sign all application forms required of an individual applicant under this ordinance, but only one application fee shall be charged.
- (11) The names and addresses of the owner and lessor of the real property upon which the business is to be conducted and a copy of the lease or rental agreement.
- (12) Such other identification and information as the police department may require in order to discover the truth of the matters specified in this section as required to be set forth in the application.

(13) The age, date of birth and social security number of the applicant, of any partner or of any and all officers, of any stockholder of more than five percent of the shares of the corporation stock outstanding, or director of the applicant if the applicant is a corporation.

(14) If the applicant, any partner or any officer or stockholder holding more than five percent of the outstanding shares of the corporation or the director of the applicant, if the applicant is a corporation, has ever been convicted of any crime constituting a felony or any crime not a felony involving moral turpitude in the past five years and, if so, a complete description of any such crime, including the date of violation, date of conviction, jurisdiction and any disposition, including any fine or sentence imposed, and whether the terms of disposition have been fully completed.

(15) The fingerprints of the individual applicant.

(16) If the applicant is a person doing business under a trade name, a copy of the trade name properly recorded. If the applicant is a corporation, a copy of the authority to do business in the state, including articles of incorporation, trade name affidavit, if any, and last annual report, if any.

(17) At least three character references from individuals who are in no way related to the applicant or individual shareholders, officers or directors of a corporation and who are not or will not benefit financially in any way from the application if the license is granted and who have not been convicted of any felony or a municipal code violation involving moral turpitude in the past five years.. The licensing officer shall prepare forms consistent with this subsection for the applicant, who shall submit all character references on such forms.

(18) The address of the premises to be licensed.

(19) Whether the premises are owned or rented; if the applicant has a right to legal possession of the premises, a copy of those documents giving such legal right.

(20) A certified plat by a registered surveyor or engineer, licensed by the state, showing the location of the proposed premises in relation to the neighborhood; the surrounding zoning; its proximity to any church, school, public park, governmental building or site or other business regulated under this ordinance.

(21) Each application for an adult entertainment establishment license shall be verified and acknowledged under oath to be true and correct by:

- a. If the applicant is an individual, the individual.
- b. If a partnership, the manager or general partner.

- c. If a corporation, the president of the corporation.
- d. If any other organization or association, the chief administrative official.

SECTION 19. APPLICANT TO APPEAR.

Under this ordinance the applicant, if an individual, or the designated responsible managing officer, if a partnership or corporation, shall personally appear before the city and produce proof that a nonrefundable application fee, established by resolution of the council, has been paid and shall present the application containing the information described in Section 18.

SECTION 20. INVESTIGATION OF APPLICATION.

The city shall have 45 days to investigate the application submitted pursuant to this ordinance and the background of the applicant. Upon completion of the investigation, the mayor and council may grant the permit if it finds as follows:

- (1) The required fee has been paid.
- (2) The application conforms in all respects to this ordinance.
- (3) The applicant has not knowingly made a material misrepresentation in the application.
- (4) The applicant has fully cooperated in the investigation of his application.
- (5) The applicant, if an individual, or any of the stockholders of the corporation or any officers or directors, if the applicant is a corporation, or any of the partners, including limited partners, if the applicant is a partnership, has not been convicted in a court of competent jurisdiction of an offense involving conduct or convicted of an attempt to commit any of the offenses mentioned in this ordinance or convicted in any state of any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses mentioned in this ordinance or any crime involving dishonesty, fraud, deceit or moral turpitude.
- (6) The applicant has not had an adult entertainment establishment permit or other similar license or permit denied or revoked for cause by this city or any other city or county located in or out of this state prior to the date of the application.
- (7) The building, structure, equipment or location of such business, as proposed by the applicant, would comply with all applicable laws, including but not limited to health, zoning, distance, fire and safety requirements and standards.

(8) The applicant is at least 21 years of age.

(9) The applicant or his employee, agent, partner, director, officer, stockholder or manager has not, within five years of the date of the application, knowingly allowed or permitted any of the specified sexual activities as defined in this ordinance to be committed or allowed in or upon the premises where such adult entertainment establishment is to be located or to be used as a place in which solicitations for the specified sexual activities as defined in this ordinance openly occur.

(10) On the date the business for which a permit is required commences and thereafter, there will be a responsible person on the premises to act as manager at all times during which the business is open.

(11) The proposed premises are not located too close to any church, school, library, governmental building or site or any other business restricted under this ordinance.

(12) The grant of such license will not cause a violation of this ordinance or any other ordinance or regulation of the city, the state or the United States.

(13) Any other inquiry deemed necessary or desirable by the city to ensure the health, safety and welfare of the citizens of the city or the preservation of its neighborhoods.

SECTION 21. PERSONS PROHIBITED AS LICENSEES.

(a) No license required by this ordinance shall be issued to or held by the following:

(1) An applicant who has not paid all required fees and taxes for a business at that location or property taxes.

(2) Any person who is not of good moral character.

(3) Any corporation, any of whose officers, directors or stockholders holding over five percent of the outstanding issued shares of capital stock are not of good moral character.

(4) Any partnership or association, any of whose officers or members holding more than five percent interest therein are not of good moral character.

(5) Any person employing, assisted by or financed in whole or in part by any person who is not of good moral character.

(6) Any applicant who is not qualified to hold and conduct business according to the laws of the United States, the state or the city.

(b) If there is a sufficient number of current licenses to meet the needs and desires of the city's inhabitants, no new license shall issue. In determining the needs and desires of the inhabitants, the standard of review shall be that the market is virtually unrestrained as defined in Young v. American Mini Theaters, Inc., 427 U.S. 50, 81 (1976).

SECTION 22. DENIAL.

If the city, following investigation of the person making application under this ordinance, deems that the applicant does not fulfill the requirements as set forth in this ordinance, it shall notify the city clerk of such opinion and, within 45 days of the date of the application, provide copies of the investigation report to the city clerk. The city clerk shall, within ten days, notify the applicant by certified mail of such denial. Any applicant who is denied a permit may appeal such denial to the mayor and council.

SECTION 23. APPEAL PROCEDURE.

(a) Under this ordinance, the applicant or permittee shall, within ten days after he has been notified of an adverse determination, submit a notice of appeal to the city clerk.

(b) The notice of appeal shall be addressed to the council and shall specify the subject matter of the appeal, the date of any original and amended application or requests, the date of the adverse decision or receipt of notice thereof, the basis of the appeal, the action requested of the council and the name of the applicant.

(c) The clerk shall place the appeal on the agenda of the next regular council meeting occurring not less than five nor more than 30 days after receipt of the application for council action.

SECTION 24. COUNCIL ACTION ON APPEAL.

When an appeal is placed on the council agenda pursuant to this ordinance, the council may take either of the following actions:

- (1) Set a hearing date and instruct the city clerk to give such notice of hearing as may be required by law.
- (2) Appoint a hearing officer and fix the time and place for hearing. The hearing officer may or may not be a city employee and may be appointed for an extended period of time. The clerk shall assume responsibility for such publication of the notice of the hearing as may be required by law. If a hearing officer is appointed, the hearing shall be conducted in accordance with the procedures set out in this ordinance.

SECTION 25. HEARING OF APPEAL.

Whenever the city clerk has scheduled an appeal before the council as provided in this ordinance, at the time and date set therefore, the council shall receive all relevant testimony and evidence from the permittee, from interested parties and from city staff. The council may sustain, overrule or modify the action complained of. The action of the council shall be final.

SECTION 26. POWERS OF HEARING OFFICER.

The hearing officer, appointed pursuant to the procedure set out in this ordinance, may receive and rule on admissibility of evidence, hear testimony under oath and call witnesses as he may deem advisable with respect to the conduct of the hearing.

SECTION 27. RULES OF EVIDENCE.

The council and the hearing officer shall not be bound by the traditional rules of evidence in hearings conducted under this ordinance. Rules of evidence as applied in an administrative hearing shall apply.

SECTION 28. REPORT OF HEARING OFFICER.

(a) The hearing officer shall, within a reasonable time not to exceed 30 days from the date the hearing held pursuant to this ordinance is terminated, submit a written report to the council. Such report shall contain a brief summary of the evidence considered and shall state findings, conclusions and recommendations. All such reports shall be filed with the city clerk and shall be considered public records. A copy of such report shall be forwarded by certified mail to the permittee/appellant the same day as it is filed with the city clerk, with additional copies furnished to the administrator and chief of police.

(b) The city clerk shall place the hearing officer's report on the agenda of the next regular council meeting occurring not less than ten days after the report is filed and shall notify the permittee/appellant of the date of such meeting at least ten days prior to the meeting unless the permittee/appellant stipulates to a shorter notice period.

SECTION 29. COUNCIL ACTION ON REPORT OF HEARING OFFICER.

The city council may adopt or reject the hearing officer's decision made pursuant to this ordinance in its entirety or may modify the proposed recommendation. If the city council does not adopt the hearing officer's recommendation, it may:

- (1) Refer the matter to the same or another hearing officer for a completely new hearing or for the taking of additional evidence on specific points; in either of such cases the hearing officer shall proceed as provided in this ordinance.
- (2) Decide the case upon a review of the entire record before the hearing officer, with or without taking additional evidence.

SECTION 30. PERMIT RENEWAL.

A permit for an adult entertainment establishment may be renewed on a year-to-year basis, provided that the permittee continues to meet the requirements set out in this ordinance. The renewal fee for the adult entertainment establishment permits shall be established by resolution of the council.

SECTION 31. PERMITS NONTRANSFERABLE.

No adult entertainment establishment permit may be sold, transferred or assigned by a permittee or by operation of law to any other person. Any such sale, transfer or assignment or attempted sale, transfer or assignment shall be deemed to constitute a voluntary surrender of such permit, and such permit shall thereafter be null and void. However, if the permittee is a partnership and one or more of the partners should die, one or more of the surviving partners may acquire, by purchase or otherwise, the interest of the deceased partner without effecting a surrender or termination of such permit; in such case the permit, upon notification to the city, shall be placed in the name of the surviving partners. An adult entertainment establishment permit issued to a corporation shall be deemed terminated and void when either any outstanding stock of the corporation is sold, transferred or assigned after the issuance of a permit or any stock authorized but not issued at the time of the granting of a permit is thereafter issued and sold, transferred or assigned.

SECTION 32. CHANGE OF LOCATION OR NAME.

(a) No adult entertainment establishment shall move from the location specified on its permit until a change of location fee, established by resolution of the council, has been deposited with the city and approval has been obtained from the administrator and the building inspector. Such approval shall not be given unless all requirements and regulations, as contained in the city's codes, have been met.

(b) No permittee shall operate, conduct, manage, engage in or carry on an adult entertainment establishment under any name other than his name and the name of the business as specified on his permit.

(c) Any application for an extension or expansion of a building or other place of business where an adult entertainment establishment is located shall require inspection and shall comply with the regulations of this ordinance.

**SECTION 33. REPEAL OF CONFLICTING ORDINANCES TO THE
EXTENT OF THE CONFLICT.**

Any part of any prior ordinances, in conflict with the terms of this ordinance, are hereby repealed to the extent of the conflict; but it is hereby provided, that any ordinance or law which may be applicable hereto and aid in carrying out and making effective the intent, purpose and provisions hereof, is hereby adopted as a part hereof and shall be legally construed to be in favor of upholding this ordinance on behalf of the City of Blue Ridge, Georgia.

SECTION 34. SEVERABILITY.

If any paragraph, subparagraph, sentence, clause, phrase, or any portion of this ordinance shall be declared invalid or unconstitutional by any court of competent jurisdiction or if the provisions of any part of this ordinance as applied to any particular situation or set of circumstances shall be declared invalid or unconstitutional, such invalidity shall not be construed to effect the portions of this ordinance not so held to be invalid, or the application of this Ordinance to other circumstances not so held to be invalid. It is hereby declared to be the intent of the City Council of the City of Blue Ridge to provide for separate and divisible parts, and it does hereby adopt any and all parts hereof as may not be held invalid for any reason.

This _____ day of _____, 2007.

BLUE RIDGE CITY COUNCIL

By: _____
Mayor

Councilperson

Councilperson

Councilperson

Councilperson

Councilperson

Attest:

City Clerk Bill Sowers

2881/W095024